IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 1065 OF 2005

IN

NOTICE OF MOTION NO. 2 OF 2005

IN

TESTAMENTARY PETITION NO. 172 OF 2004

Smt. Premila @ Pista C.Dave ... Appellant
(Orig.Respondent No.1)

Versus

Smt. Kalpana Dilip Dave & Ors. ... Respondents

Mr. S.M.Khaire for the appellant in support of the Notice of Motion.

None for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 29th August, 2007.

P.C.

1. By this Appeal, the appellant, who is original respondent No.1 in a Petition for Letters of

Administration, challenges the order dated 12th August, 2005 passed by the Testamentary Court in Notice of Motion No.2 of 2005. By that order, a learned Single Judge of this Court has appointed Court Receiver on the property which is alleged to have been left behind by the deceased.

2. The learned Counsel appearing for the appellant submits that that order has been made in Notice of Motion No.2 of 2005. According to him, in that Notice of Motion, there is no prayer for appointment of receiver and, therefore, in the absence of any prayer for appointment of receiver, the learned Single Judge could not have made the order of appointment of receiver.

3. None appears for the respondents.

4. We have gone through the record. It is apparent from the Notice of Motion No.2 of 2005 that in that Notice of Motion, there is no prayer for appointment of receiver. Obviously, therefore, in the affidavit filed in support of the Motion, there is nothing to be found in support of an order for appointment of receiver. Perusal of the order impugned further shows that the learned Single Judge has appointed receiver on the property which is alleged to have been left behind by

the deceased. In our opinion, therefore, the impugned order appears to have been made in clear breach of the principles of natural justice. In this view of the matter, in our opinion, therefore, the following order would meet the ends of justice :-

> The order impugned in the Appeal dated 12th August, 2005 is set aside. Notice of Motion No. 2 of 2005 is remitted back to the learned Single Judge for hearing and decision in accordance with law. The Appeal disposed of.

5. In view of the order passed in the Appeal, the Notice of Motion No.3430 of 2005 does not survive for consideration. Hence, it is disposed of.

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(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)